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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,452	12/31/2001	Ronald L. Edens	17,725	9483

23556 7590 03/12/2004

KIMBERLY-CLARK WORLDWIDE, INC.
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EXAMINER

REICHLE, KARIN M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 03/12/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/039,452

Applicant(s)

EDENS ET AL.

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18 and 22-27 is/are pending in the application.
- 4a) Of the above claim(s) 24 and 27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18, 22, 23, 25 and 26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Claims 24 and 27 are still withdrawn from consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 11.

Description

2. The disclosure is objected to because of the following informalities: On page 2, lines 16 and 18, reference to the inventors should be avoided.

Appropriate correction is required.

Claim Language Interpretation

3. It is noted that while "labial pad" is defined on page 5, lines 10-13 that the claims are drawn to an "absorbent article". "Vestibule", "disposition of the absorbent article into the vestibule", and the various directional terms used in the claims are interpreted as defined on page 5, lines 14-17 and 27-29, page 5, lines 21-23, and page 6, lines 5-20, respectively.

Claim Rejections - 35 USC § 102

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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5. Claims 18, 22-23 and 25-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Lassen et al '062.

With regard to claims, see Claim Interpretation Section *supra*, see Figures 1-12, i.e. the absorbent article is 30 and comprises an absorbent 74, a liquid impermeable baffle or lower surface 70, and a liquid permeable cover or upper surface 80, see col. 18, line 8-col. 19, line 38, a principal longitudinal axis along which the article is substantially folded, see Figures, especially Figure 11 and col. 12, lines 1-26, discrete points of at least temporary juncture in the center and end regions, see especially Figure 3 and col. 6, lines 46-53 and col. 12, lines 27-66 (Note the specific dimensions of each region with respect to the overall article have not been set forth) and a recess, below and adjacent points 72, see especially Figures 8 and 9. The absorbent article 30 is configured for disposition within the vestibule, see col. 1, lines 18-22, col. 6, lines 17-20, col. 9, lines 20-59 and col. 11, lines 14-35. Claim 18 set forths the lower surface being adaptable to define a finger receiving area of dimensions sufficient to at least temporarily receive at least a distal portion of a finger in a manner that allows at least the distal portion of the finger to be positioned substantially parallel to a principal longitudinal axis of the article, i.e. properties, functions and capabilities of the lower surface. See the portions of Lassen et al cited *supra*, i.e. Lassen includes all the claimed structure. Therefore there is sufficient factual evidence for one to conclude that the properties, capabilities and function of such claimed structure are also inherent in the same structure of Lassen. See MPEP 2112.01.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 18, 22-23 and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson et al '392 on view of Osborn PCT '610.

With regard to claims, see Claim Interpretation Section supra, see Figures 1-3, i.e. the absorbent article is 1 and comprises an absorbent 6, a liquid impermeable baffle or lower surface 6, and a liquid permeable cover or upper surface 70, see col. 2, lines 31-36, a principal longitudinal axis 2 along which the article is substantially folded, see Figure 2, and col. 2, lines 36-41 and claim 1 thereof, discrete points of at least temporary juncture 4 in the center and end regions, see also col. 2, lines 44-48 (Note the specific dimensions of each region with respect to the overall article have not been set forth) and a recess, between points 4, see especially Figures 2-3. The absorbent article 1 is configured for disposition within the vestibule, see col. 1, lines 1-3 and 33-34. The lower surface is adaptable to define a finger receiving area, see col. 2, lines 9-19, of dimensions sufficient to at least temporarily receive at least a portion of a finger in a manner that allows at least the portion of the finger to be positioned substantially parallel to a principal axis of the article, see, e.g. Figure 3 which shows at least a distal portion of the finger, i.e. the distal portion extending or oriented perpendicular to the longitudinal axis of the finger, substantially parallel to the y- or longitudinal axis of the article. It should be noted that the claim does not require the longitudinal axis of the distal portion of the finger being parallel to the

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principal longitudinal axis, i.e. the transverse axis of the distal portion is parallel to the principal longitudinal axis in Johnson. Therefore, the Johnson device includes all the claimed structure except for the peripheries of the cover and baffle extending beyond the periphery of the absorbent and joined together to form an edge. Johnson teaches the cover, absorbent and baffle assembled in a coextensive manner. However see page 13, lines 7-12 of Osborn '610, i.e. any suitable manner of assembling a topsheet, backsheet and core of an interlabial device interchangeable with the structure of the claims. To make the manner of assembling the topsheet, backsheet and core of Johnson the claimed manner of assembling instead, i.e. core and baffle extend beyond the absorbent and are joined, would be obvious to one of ordinary skill in the art in view of the interchangeability as taught by Osborn '610.

Response to Arguments

8. Applicant's remarks with regard to form, Rosenbluth, Kolby-Falk and the 102 rejection on Osborn '610 alone have been noted but are deemed moot in that the issue has not been reraised. Applicant's remarks with regard to Lassen '061 have been noted but are deemed not persuasive because such arguments are deemed narrower than the teachings of Lassen which teach the claimed juncture, see the portions of Lassen cited supra, esp. Figures 3, 9 and 11, element 72. Applicant's remarks with regard to Johnson have been noted but are deemed not persuasive because such arguments are narrower than the claim language and the prior art teachings, see the rejection under 35 USC 103 supra.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any new grounds of rejection were necessitated by the addition of the features set forth in the underlined language of claim 18.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 308-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
March 10, 2004